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Public Prosecutor v Ha Kiang Ngu

B HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO WA-45A-10–05 OF 2020
COLLIN LAWRENCE SEQUERAH J
12 JANUARY 2023

C *Criminal Law — Dangerous drugs — Trafficking — Accused charged under s 39B(1)(a) of Dangerous Drugs Act 1952 — Whether ingredients of offence was proven — Whether there was break in chain of exhibits — Whether prosecution made out prima facie case against accused — Whether defence of accused raised reasonable doubt against prosecution's case — Dangerous Drugs Act 1952 s 39B(1)(a)*

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On 24 October 2019, at around 9.20pm, acting upon information received, PW2 led a police raiding party and conducted an observation at Jalan Imbi area for around ten minutes. They observed a male Chinese walking alone while carrying a black and white colour plastic bag ('the plastic bag') over his right shoulder. PW2 and the members of his raiding party detained the male Chinese ('the accused') and introduced themselves as police. PW2 seized the plastic bag and conducted an inspection of the contents of the bag and found six green coloured plastic packets. Further examination conducted on each of the green plastic packages revealed one transparent plastic each containing a substance suspected to be methamphetamine. Altogether there were six transparent plastic bags. The accused was then formally arrested by PW2 and the raiding party. PW2 and the raiding party brought the accused and the seized impugned exhibits to the Jabatan Siasatan Jenayah Narkotik IPK Kuala Lumpur. The accused was charged for trafficking dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'). The accused at the time of his arrest was aged 15 years old. The accused was, therefore, at the time of commission of the offence a 'child' according to s 2 of the Child Act 2001, being under the age of 18 years old. The defence case was that the bag containing the impugned drugs belonged to a friend of the uncle of the accused ('SD2') by the name of William, who was a Grab Food rider, and that the accused was only asked to help deliver the bag to a third party at the request of SD2's friend.

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Held, convicting the accused of the charge:

(1) The prosecution had successfully proved the nature, quality and quantity of the dangerous drugs. Secondly, there was no reason to doubt the prosecution version that the accused was alone when he carried the bag

with the impugned drugs and that there were no other vehicles present in the vicinity when the accused was arrested. The accused had custody and control of the bag and consequently the statutory presumption under s 37(d) of the DDA of possession and knowledge of the offending exhibits would arise against the accused. The prosecution had successfully proven the ingredient of possession against the accused. Lastly, the accused was walking alone while carrying a bag containing the impugned drugs when he was arrested. It was a reasonable inference that he was in the act of transporting the impugned drugs from one place to another before he was apprehended by the police. The accused was engaged in the act of trafficking in transporting and carrying the dangerous drugs (see paras 36, 46, 49–51 & 53).

(2) The fact that there was a tear in the bag did not prejudice the prosecution's case with regard to the chain of exhibits because the contents in the bag revealed six green coloured plastic wrappings which contained in each one packet of transparent plastic containing methamphetamine. The same goes for the contention that the bag produced in court which was with brown circles differed from its description in the search list and the handover acknowledgement list which was stated as white and black. The description of the bag as being with brown circles or as black and white was often a matter of individual perception in describing the same item. There was no merit in the argument advanced by the accused in respect of this issue and thus, there was no break in the chain of exhibits (see paras 59, 61–62, 64 & 67).

(3) There was no merit to the contention ie the omission to mention the observation made in the police report raised by the defence as it was trite that the police report was not to be treated or taken to be an all-encompassing or detailed account of events that transpired. The prosecution had successfully made out a prima facie case against the accused. The statutory presumption of possession and knowledge of the impugned drugs under s 37(d) of the DDA had arisen against the accused. According to the interpretation s 2 of the DDA, the accused was in the act of trafficking by carrying the impugned drugs when he was arrested (see paras 68–71).

(4) SD2 and the accused had invented the 'Herbalife' business in an attempt to disguise the true nature of their business which was trafficking in dangerous drugs. The version of SD2 fleeing the scene was merely concocted in order to propagate the defence that SD2 was also present at the scene where he had dropped the accused and in order to explain why the raiding party never reported seeing any other vehicle or persons at the scene. SD2's defence also did not withstand curial scrutiny because there was no attempt after the incident to clear the name of his nephew. Given the admission by SD2 himself that he and William were not particularly

close, no reasonable person would have accepted without inquiry or question as to the contents of the bag. Accordingly, the testimony of SD2 was not capable of belief nor did it rebut the statutory presumption of possession and knowledge under s 37(d) of the DDA nor raise a reasonable doubt as to trafficking. Additionally, it defied reasonable belief that SD2 would be paid the amount of RM30 for the delivery when it would be more cost effective if not a lot cheaper to utilise the services of either Grab delivery or Food Panda to transport foodstuff (see paras 149, 152–153, 163 & 165).

(5) The defence had failed to rebut the statutory presumption of possession and knowledge under s 37(d) of the DDA. The accused had also failed to raise a reasonable doubt as to trafficking as defined under s 2 of the DDA. The prosecution had, therefore, successfully proven its case against the accused beyond a reasonable doubt. The accused was ordered to be detained in a prison during the pleasure of His Majesty the Yang di-Pertuan Agong (see paras 169–171 & 174).

[Bahasa Malaysia summary

Pada 24 Oktober 2019, kira-kira jam 9.20 malam, bertindak atas maklumat diterima, PW2 mengetuai serbuan polis dan melakukan pemerhatian di kawasan Jalan Imbi selama lebih kurang sepuluh minit. Mereka memerhatikan seorang lelaki Cina berjalan sendirian sambil membawa beg plastik berwarna hitam putih ('beg plastik') di atas bahu kanannya. PW2 dan anggota serbuannya telah menahan lelaki Cina ('tertuduh') dan memperkenalkan diri mereka sebagai polis. PW2 merampas beg plastik itu dan menjalankan pemeriksaan terhadap kandungan beg itu dan menemui enam paket plastik berwarna hijau. Pemeriksaan lanjut dijalankan ke atas setiap bungkusan plastik hijau itu mendapati satu plastik lutsinar setiap satu mengandungi bahan disyaki methamphetamine. Kesemuanya terdapat enam beg plastik lutsinar. Tertuduh kemudiannya ditahan secara rasmi oleh PW2 dan pihak serbuan. PW2 dan pihak serbuan membawa tertuduh dan barang bukti yang dirampas ke Jabatan Siasatan Jenayah Narkotik IPK Kuala Lumpur. Tertuduh didakwa mengedar dadah berbahaya di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Tertuduh ketika ditahan berusia 15 tahun. Oleh itu, tertuduh adalah 'kanak-kanak' pada masa melakukan kesalahan itu mengikut s 2 Akta Kanak-Kanak 2001, iaitu di bawah umur 18 tahun. Kes pembelaan ialah beg yang mengandungi dadah yang didakwa itu adalah milik rakan bapa saudara tertuduh ('SD2') bernama William, yang merupakan penghantar Makanan Grab, dan tertuduh hanya diminta untuk membantu menghantar beg kepada pihak ketiga atas permintaan rakan SD2.

Diputuskan, mensabitkan tertuduh dengan pertuduhan:

(1) Pihak pendakwaan telah berjaya membuktikan sifat, kualiti dan kuantiti dadah berbahaya itu. Kedua, tidak ada sebab untuk meragui versi

pendakwaan bahawa tertuduh bersendirian ketika dia membawa beg berisi dadah yang didakwa dan tiada kenderaan lain berada di kawasan berhampiran semasa tertuduh ditangkap. Tertuduh mempunyai jagaan dan kawalan ke atas beg itu dan akibatnya anggapan berkanun di bawah s 37(d) ADB tentang pemilikan dan pengetahuan tentang ekshibit yang salah akan timbul terhadap tertuduh. Pihak pendakwaan telah berjaya membuktikan inti pati pemilikan terhadap tertuduh. Akhir sekali, tertuduh sedang berjalan bersendirian sambil membawa beg berisi dadah yang didakwa semasa dia ditahan. Ia adalah satu kesimpulan yang munasabah bahawa dia sedang dalam tindakan mengangkut dadah yang didakwa dari satu tempat ke tempat lain sebelum dia ditahan oleh polis. Tertuduh terlibat dalam perbuatan mengedar dengan mengangkut dan membawa dadah berbahaya itu (lihat perenggan 36, 46, 49–51 & 53).

(2) Fakta bahawa terdapat koyakan di dalam beg itu tidak menjejaskan kes pendakwaan berhubung rantaian ekshibit kerana kandungan di dalam beg itu mendedahkan enam bungkus plastik berwarna hijau yang terkandung dalam setiap satu peket plastik lutsinar mengandungi methamphetamine. Begitu juga dengan dakwaan bahawa beg yang dikemukakan di mahkamah dengan bulatan coklat berbeza daripada keterangan dalam senarai carian dan borang serah terima barang kes yang dinyatakan sebagai putih dan hitam. Perihalan beg itu sebagai bulatan coklat atau hitam dan putih selalunya adalah soal persepsi individu dalam menggambarkan item yang sama. Tiada merit dalam hujah yang dikemukakan oleh tertuduh berkenaan dengan isu ini dan dengan itu, rantaian ekshibit tidak terputus (lihat perenggan 59, 61–62, 64 & 67).

(3) Tidak ada merit kepada dakwaan iaitu peninggalan untuk menyebut pemerhatian yang dibuat dalam laporan polis yang dibangkitkan oleh pihak pembelaan kerana adalah mantap bahawa laporan polis itu tidak boleh diperlakukan atau dianggap sebagai satu siri kejadian yang menyeluruh atau terperinci berkenaan peristiwa yang berlaku. Pihak pendakwaan telah berjaya membuktikan kes prima facie terhadap tertuduh. Anggapan berkanun tentang pemilikan dan pengetahuan mengenai dadah yang didakwa di bawah s 37(d) ADB telah timbul terhadap tertuduh. Menurut tafsiran s 2 ADB, tertuduh sedang dalam tindakan mengedar dengan membawa dadah yang didakwa semasa dia ditangkap (lihat perenggan 68–71).

(4) SD2 dan tertuduh telah mencipta perniagaan 'Herbalife' dalam cubaan untuk menyamarkan sifat sebenar perniagaan mereka yang mengedar dadah berbahaya. Versi SD2 yang melarikan diri dari tempat kejadian adalah semata-mata diadakan untuk menimbulkan pembelaan bahawa SD2 juga hadir di tempat kejadian di mana dia telah menurunkan tertuduh dan untuk menjelaskan mengapa pihak yang menyerbu tidak pernah melaporkan melihat mana-mana kenderaan atau orang lain di

tempat kejadian. Pembelaan SD2 juga tidak dapat menentang penelitian kurial kerana tiada percubaan selepas kejadian untuk membersihkan nama anak saudaranya. Memandangkan pengakuan oleh SD2 sendiri bahawa dia dan William tidak begitu rapat, tiada orang yang munasabah akan menerima tanpa pertanyaan atau soalan tentang kandungan beg itu. Sehubungan itu, keterangan SD2 tidak boleh dipercayai dan tidak juga menyangkal anggapan berkanun tentang pemilikan dan pengetahuan di bawah s 37(d) ADB atau menimbulkan keraguan munasabah tentang pengedaran. Selain itu, ia menentang kepercayaan munasabah bahawa SD2 akan dibayar amaun RM30 untuk penghantaran apabila ia akan lebih menjimatkan kos jika tidak jauh lebih murah untuk menggunakan perkhidmatan sama ada penghantaran Grab atau Food Panda untuk menghantar makanan (lihat perenggan 149, 152–153, 163 & 165).

(5) Pembelaan telah gagal untuk menyangkal anggapan statutori pemilikan dan pengetahuan di bawah s 37(d) ADB. Tertuduh juga gagal menimbulkan keraguan munasabah mengenai pengedaran seperti yang ditakrifkan di bawah s 2 ADB. Oleh itu, pihak pendakwaan telah berjaya membuktikan kesnya terhadap tertuduh tanpa keraguan munasabah. Tertuduh diperintahkan untuk ditahan di penjara semasa diperkenankan Seri Paduka Baginda Yang di-Pertuan Agong (lihat perenggan 169–171 & 174).]

Cases referred to

Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209, FC (refd)
Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Liew Kaling & Ors v PP [1960] 1 MLJ 306, CA (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65; [2003] 1 CLJ 734; [2003] 2 AMR 89, CA (refd)
Mat v PP [1963] 1 MLJ 263 (refd)
Md Zainudin bin Raujan v PP [2013] 3 MLJ 773, FC (refd)
Miller v Minister of Pensions [1947] 2 All ER 372, KBD (refd)
PP v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1; [1999] 2 CLJ 215; [1999] 2 AMR 2017, HC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2005] 6 AMR 203, FC (refd)
PP v Datuk Haji Harun bin Haji Idris & Ors [1977] 1 MLJ 180 (refd)
PP v Saimin & Ors [1971] 2 MLJ 16 (refd)
PP v Yuvaraj [1968] 1 MLJ 238, FC (refd)
Prasit Punyang v PP [2014] 4 MLJ 282, CA (refd)

Legislation referred to

Child Act 2001 ss 2, 88, 97, 97(2)(a)
Criminal Procedure Code ss 180(1), 182A
Dangerous Drugs Act 1952 ss 2, 37(d), 39B, First Schedule

KL Chee (with Nordiana bt Mohmd, Kevin Quah Kai Meng, Evelyn Cheong Phing Zhen, Wan Zaleha bt Abdul Wahab, Naizatul Zamrina bt Karizaman and Iffah bt Amzan) (KL Chee & Co) for the accused.

Nur Ashikin bt Mokhtar (with Izalina bt Abdullah and Mohd Isa bin Mohamed) (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Collin Lawrence Sequerah J:

INTRODUCTION

[1] The accused was charged for the following:

> Bahawa kamu pada 24.10.2019, jam lebih kurang 9.20 malam, bertempat di tepi jalan Lorong 1/77a, Jalan Imbi, di dalam Daerah Dang Wangi, Wilayah Persekutuan, telah di dapati memperedarkan dadah berbahaya, iaitu sejumlah berat bersih 2310.90 gram Methamphetamine dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39(2) Akta yang sama.

[2] At the outset it is relevant to state that the accused at the time of his arrest was aged 15 years old. The accused was, therefore, at the time of commission of the offence a 'child' according to s 2 of the Child Act 2001, being under the age of 18 years old.

[3] According to s 88 of the Child Act 2001, the Court for Children shall require the child's parents or guardian to attend at the Court for Children before which the case is heard or determined during all the stages of the proceedings.

[4] At the commencement of trial, the uncle of the accused, Ha How Ping attended proceedings. About halfway through the proceedings, the mother of the accused replaced the uncle and duly attended the proceedings.

[5] The other point of significance is that because of the age of the accused, he cannot, in the event of his conviction, be sentenced to the penalty of death by hanging.

[6] The proper punishment, should the accused be found guilty and convicted of the charge, is that he be detained at the pleasure of the Ruler or Governor of the State where the crime was committed.

[7] See s 97 of the Child Act 2001.

A PERTINENT FACTS (PROSECUTION CASE)

[8] The pertinent facts adduced by the prosecution revealed that on 24 October 2019, at around 9:20pm, acting upon information received, PW2, Inspector Mohd Hafizie bin Ibrahim, led a police raiding party and conducted an observation at the Jalan Imbi, area for around ten minutes.

[9] While doing so, they observed a male Chinese walking alone while carrying a black and white colour plastic bag ('plastic bag') over his right shoulder. PW2 and the members of his raiding party detained the male Chinese ('accused') and introduced themselves as police.

[10] PW2 seized the said plastic bag and while being observed by the accused and members of the raiding party, conducted an inspection of the contents of the bag and found six green coloured plastic packets with the writing ('Guanyinwang') on it.

[11] Further examination conducted on each of the green plastic packages revealed one transparent plastic each containing a substance suspected to be methamphetamine. Altogether there were six transparent plastic bags. The accused was then formally arrested by PW2 and the raiding party.

[12] PW2 prepared a search list at the scene of the arrest which was signed by both himself and the accused.

[13] PW2 and the raiding party brought the accused and the seized impugned exhibits to the Jabatan Siasatan Jenayah Narkotik (JSJN) IPK Kuala Lumpur.

[14] During this time, the drug exhibits were in the constant care and custody of PW2. Upon arrival at the Police Station, PW2 lodged a police report THSL/30167/19 regarding the seizure and arrest.

[15] On 24 October 2019, at around 9:45pm, in front of the accused and the raiding party, PW2 weighed the drug exhibits and found them to have a gross weight of 6,240g.

[16] On 25 October 2019, at around 2am, at the JSJN IPK Kuala Lumpur, PW2 marked the exhibits seized as follows:

(a) black and white plastic bag, marked 'H', dated 24 October 2019 and PW2's signature;

(b) six green plastic packages with the words 'Guanyinwang', marked 'H1–H6', dated 24 October 2019 and PW2's signature; and

(c) six transparent plastic packets containing substance suspected to be methamphetamine, marked 'H1a-H6a', dated 24 October 2019 and PW2's signature.

[17] On 25 October 2019, at around 2:30am, at the JSJN IPK Kuala Lumpur, PW2 prepared a Handover and Acknowledgment Form ('Borang Serah Menyerah').

[18] On 25 October 2019, at around 6:22 am, PW2 handed over the accused and the impugned exhibits to the Investigation Officer ASP Roslan bin Tambi (IO) (PW4) at his office at the Bahagian Siasatan Jenayah Narkotik Daerah (BSJND) Dang Wangi, Kuala Lumpur together with the Handover and Acknowledgment Form ('Borang Serah Menyerah') (P15).

[19] PW4 also made markings and placed his signature on the exhibits as follows;

(a) one white and black plastic bag with the marking 'R';

(b) six green plastic packets with the words 'Guanyinwang' with the marking 'R1-R6'; and

(c) six transparent plastic packets containing substance suspected to be methamphetamine having a gross weight of 6,240g with the marking 'R1a-R6a'.

[20] PW4 said that he kept all the exhibits under lock and key in his office drawer and to which only he had access to.

[21] On 25 October 2019 at around 8am, PW4 took out the exhibits and instructed Lance Corporal Muzamir, a photographer from the BSJND IPD Dang Wangi to take photographs of the exhibits.

[22] On 25 October 2019 at around 9am, PW4 instructed Lance Corporal Cornelius Anak Nadung to carry out fingerprint dusting on the drug exhibits. However, no traces of fingerprints were able to be lifted. PW4 then kept all the exhibits back under lock and key in his office drawer.

[23] On 29 October 2019 at around 8am, PW4 took out all the exhibits from the drawer in his office and handed over and registered the exhibits at the police store having registration number 1960/19.

[24] PW4 then placed all the exhibits in a box marked as 'RA' and sealed with 'POLIS DIRAJA MALAYSIA 756' in order to deliver to the Chemist Department for analysis.

[25] On 29 October 2019 at around 12:03pm, PW4 handed over the box marked 'EA' containing 1 plastic bag marked 'R' containing six transparent plastic packets marked 'R1' until 'R6' respectively each containing substance suspected of being methamphetamine in transparent plastic packets marked 'R1 until 'R6' together with application form POL 31 to the chemist, Encik Rahman bin Mamat.

[26] PW4 was handed a receipt acknowledging delivery and receipt of the exhibits with the case number 19-FR-B-25052.

[27] On 19 Febuary 2020 at around 5:45pm, PW4 received back one box marked 'RA' and sealed with the Jabatan Kimia Malaysia seal number 19-FR-B-25052 together with a Chemist Report prepared by the Chemist Encik Rahman bin Mamat.

[28] On 20 Febuary 2020 at around 4pm, PW4 handed over the box marked 'RA' sealed with the Jabatan Kimia Malaysia label number 19-FR-B-25052 to Corporal Azhar for safekeeping in the exhibits store having registration number 1960/19.

DUTY OF COURT AT THE END OF PROSECUTION'S CASE

[29] The duty of the court at the end of the prosecution's case is set out in s 180(1) of the Criminal Procedure Code ('the CPC') which stipulates that when the case for the prosecution is concluded the court shall consider whether the prosecution has made out a prima facie case against the accused.

[30] The cases of *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1; [1999] 2 CLJ 215; [1999] 2 AMR 2017, *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65; [2003] 1 CLJ 734; [2003] 2 AMR 89, *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85 and *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2005] 6 AMR 203 respectively lay down the proposition that at the end of the case for the prosecution, their evidence must be subject to maximum evaluation in order to determine whether a prima facie case is made out.

[31] In *Looi Kow Chai & Anor v Public Prosecutor*, the Court of Appeal held:

> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the CPC has to undertake at the close of the prosecution case. He must

subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal'.

ANALYSIS OF THE PROSECUTION'S CASE

Ingredients of the offence of trafficking

[32] In order for the prosecution to make out a prima facie case in respect of the charge against the accused, it is incumbent on them to prove the following ingredients. Firstly, that the drugs are dangerous drugs within the meaning and definition of the Dangerous Drugs Act 1952 ('the DDA'). Secondly, that the accused was in possession of the impugned drugs. Thirdly, that the accused was trafficking in the drugs.

The drugs are dangerous drugs within the meaning and definition of the DDA

[33] SP1, the Government Chemist, explained his methods of analysis of the impugned drugs in his testimony. In particular, he described the tests that he performed one of which was the colour tests namely, the Marquis and the Simon tests which yielded positive for methamphetamine.

[34] SP1 also described that he performed the Gas Chromatography-Mass Spectrometer (GCMS) Test which he said confirmed that the said substance was methamphetamine.

[35] SP1 next said that he carried out the Gas Chromatography-Flame Ionization Detector (GCFID) Test which is a quantitative test in which he took five representative samples after homogenization and which analysis showed the quantity of methamphetamine to be 2,310.9g nett.

[36] SP1 further stated that methamphetamine is listed in the First Schedule to the DDA. SP1 further stated that his methods of analysis were in line with the accepted methods sanctioned by the United Nations Office on Drugs and Crime ('UNODC').

[37] In all the circumstances, I found, therefore, that the prosecution had successfully proved the nature, quality and quantity of the dangerous drugs.

A The accused was in possession of the impugned drugs

[38] The prosecution evidence is that on 24 October 2019 at around 9:20pm, the accused was arrested at the side of Lorong 1/77A, Imbi, in the district of Dang Wangi, Kuala Lumpur after the police raiding team conducted an observation for around ten minutes.

[39] Upon his arrest the accused was found walking alone while carrying a black and white plastic sling bag ('bag galas') on his right shoulder. Upon an inspection of the bag, dangerous drugs were discovered.

[40] SP2 who was leading the raiding party testified that he and his team had on 24 October 2019 at around 9:20pm, after making observation at the scene for around ten minutes, observed the accused walking alone with the said bag containing the impugned drugs.

[41] SP2 was, however, vigorously challenged by learned defence counsel and it was put to him that when the accused alighted from a Kia Sportage motor vehicle bearing registration number, W4516Q driven by the accused's uncle, Ha How Kok, handed him a bag and asked him to cross the road and hand it over to someone waiting in a car.

[42] It was also put to SP2 that upon the arrest of the accused, there were two cars, one driven by Ha How Kok and the other driven by the uncle's friend, that sped off hastily which members of the raiding party had tried to prevent but were unsuccessful.

[43] SP2 in reply to all the above suggestions replied that he was not sure. However, in re-examination, SP2 said that he did not agree with the defence version because he did not see the said Kia Sportage and neither did he see the accused alighting from any car.

[44] SP2 in re-examination also did not agree that there was another car across the road and that members of the raiding team had tried to prevent the said car from speeding off.

[45] With regard to these matters put to SP2, there was no suggestion that the accused were previously known to any members of the raiding team and vice versa.

[46] Consequently, there could have been no axe to grind that would result in any members of the raiding party wanting to frame allegations against the accused.

[47] In all the circumstances, therefore, I find no reason to doubt the prosecution version that the accused was alone when he carried the bag with the impugned drugs and that there were no other vehicles present in the vicinity when the accused was arrested.

[48] The evidence showed that the accused was physically carrying the said bag. The suggestion that he was handed the said bag by his uncle had been refuted by SP2 in re-examination.

[49] The suggestion that there were two other cars there were also refuted by SP2 in re-examination.

[50] It can be reasonably inferred, therefore, that the accused had custody and control of the said bag and consequently the statutory presumption under s 37(d) of the DDA of possession and knowledge of the offending exhibits would arise against the accused.

[51] I find, thus, in all the circumstances that the prosecution had successfully proven the ingredient of possession against the accused.

The accused was trafficking in the drugs

[52] The evidence clearly showed that the accused was walking alone while carrying a bag containing the impugned drugs when he was arrested. It was a reasonable inference that he was in the act of transporting the impugned drugs from one place to another before he was apprehended by the police.

[53] Section 2 of the DDA DDA reads as follows:

> 'trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act.

[54] Under all the circumstances, the accused was engaged in the act of trafficking in transporting and carrying the dangerous drugs.

Chain of exhibits

[55] The complaint raised by learned counsel or the defence with regard to the chain of exhibits were twofold, namely, the tear in the plastic bag and the description with regard to the pattern and colour of the said bag.

[56] Learned counsel submitted that SP2 and SP4 gave evidence the said bag (P8) at the time of seizure, was in good condition with no tears. This was also consistent with the police report (P14), search list (P13) and also the handover acknowledgment list (P15) where no record of there being a tear was recorded.

[57] However, submitted learned counsel, the chemist (SP1) had testified that the said bag (P8) had a tear and he also contended that the description of the bag had also changed in that it was now described as a brown 'polka dot' bag.

[58] Learned counsel further submitted that according to the Pol 31 document there was an addition of the letter' A' written in ink after the letter 'R' thus making the description of the exh 'RA' whereas in the Pol 31 submitted by the defence as exh 'IDD1' it showed that a box marked as 'R' only was sent to the chemist by SP1 for analysis.

[59] Counsel also raised the fact that according to the police report (P14), Search List (P13) and Handover Acknowledgment Form 'Borang Serah Menyerah' (P15), it is not stated that there were markings of 'AAA' and 'DDD' on the transparent plastic packets.

[60] After examining the submissions raised and going through the evidence given, I find that the fact that there was a tear in the bag (P8) does not prejudice the prosecution's case with regard to the chain of exhibits because the contents in the bag revealed six green coloured plastic wrappings which contained in each one packet of transparent plastic containing methamphetamine.

[61] These exhibits along with their markings were also positively identified by members of the raiding party, namely, SP2 and SP4 during the course of trial.

[62] The same goes for the contention that the bag (P8) produced in court which was with brown circles differed from its description in the search list (P13) and the handover acknowledgement list ('borang serah terima barang kes') (P15) which was stated as white and black.

[63] The description of the bag as being with brown circles or as black and white is often a matter of individual perception in describing the same item and I find this to be the case here.

[64] SP4 had also positively identified the bag (P8) which was marked as ('H') in P15.

[65] I thus, find no merit in the argument advanced by learned counsel for the accused in respect of this issue.

[66] With regard to the issue of the marking's 'AAA' and 'DDD' on the exhibits, SP2 and SP4 had rendered an explanation that these markings were already placed upon the exhibits and they had further positively identified these exhibits during the trial.

[67] In the circumstances, their omission from P13 and P15 did not in any way prejudice the prosecution case. The same would apply with equal force to the contention with regard to the description of the exhibit as 'RA'.

[68] In all the circumstances and for the reasons explained, I find that there was no break in the chain of exhibits.

Omission to mention the observation made in the police report (P14)

[69] I find that there is no merit to this contention raised by the cefence as it is trite that the police report is not to be treated or taken to be an all-encompassing or detailed account of events that transpired.

[70] After hearing and considering parties respective submissions, both written and oral, and conducting a maximum evaluation of the prosecution's case, this court finds that the prosecution has successfully made out a prima facie case against the accused.

[71] This court also finds that the statutory presumption of possession and knowledge of the impugned drugs under s 37(d) of the Dangerous Drugs Act 1952 ('the DDA') has arisen against the accused.

[72] This court also finds that according to the interpretation s 2 of the DDA, the accused was in the act of trafficking by carrying the impugned drugs when he was arrested.

[73] After the three alternatives were explained to the accused, he elected to give sworn evidence.

DEFENCE'S CASE

[74] The accused testified that at the time of his arrest he was aged 15 years. At the time of arrest, he was a salesman for 'Herbal Life' products since 2011. He said that he worked with his uncle, Ha How Kok and drew a monthly income of around RM300 to RM400 per month.

A **[75]** The accused said that before his arrest, he was staying with his uncle, Ha How Kok (SD2) in Puchong. The accused said that on the day of the incident at around 9:11pm, he was with his uncle heading towards Kuala Lumpur.

B **[76]** When they arrived behind Berjaya Times Square in Kuala Lumpur, his uncle handed him a bag and asked him to cross the road to hand it over to a person. The accused said that he was handed the said bag when he had alighted from the car.

C **[77]** The accused said that he was not told what were the contents of the bag and neither did he open the bag to examine its contents. He described the bag as white and black in colour. He said that the bag was zipped up at the time and was in good condition.

D **[78]** The accused said that the bag as shown in photograph P18(A) was not the bag he was given by his uncle.

[79] The accused testified that he earlier saw a friend of his uncle who was employed as a Grab Food deliverer hand over the said bag to his uncle at Kuchai E Lama.

[80] He said that his uncle took the bag and placed it on the back-passenger seat of the car that he was in. His uncle never opened the bag to examine its contents. The accused said that while on the way from Kuchai Lama to Times F Square, his uncle never told him what was in the bag.

[81] The accused said that he cannot remember the place because he went there for the first time and he only saw a TNB shop there.

G **[82]** While the accused was about to cross the road in order to hand the bag over to a person who was in a car on the other side of the road, he was surrounded and arrested by many persons and at the time he did not know whom they were.

H **[83]** He heard one of them say that they were police. He said that it was raining at the time and there were few cars on the road.

[84] When he was arrested, the accused said that he did not attempt to run I away. He said the police did not conduct a physical search on him and did not also show him the contents of the bag.

[85] He said that the police asked him who he came with and in what car. When he told them, the police then gave him a handphone and asked him to

call his uncle but there was no answer from his uncle's handphone.

[86] The accused told the police that he came in a Kia Sportage registration number W 4516 Q and he also gave the police his uncle's telephone number and his address. The accused said that when he was arrested, he was not sure where his uncle was and said that his uncle was not there when he looked back to find him.

[87] The accused said that at the time he was arrested, his uncle's friend's car was across the road and he saw the police giving chase but they were unable to catch up as the car managed to speed off.

[88] The accused said that he left his wallet in his uncle's car and in response to the police questions, said that the bag belonged to his uncle. He said that the police attempted to find his uncle but were unsuccessful.

[89] The accused said that he did not see the registration number of the car. He was also unable to remember the colour of the car nor what type of car it was.

[90] The accused said he was then taken to the police station. The accused said that he did not know that the bag he was carrying contained dangerous drugs and that he was not assisting his uncle to traffic the drugs.

[91] The defence called the uncle of the accused, Ha How Kwok as SD2. SD2 testified that he is currently detained at the Sungai Buloh Prison for a case under s 39B of the DDA.

[92] SD2 said that he was arrested in connection with the case on 27 June 2020 and charged in court on 3 July 2020. SD2 said that his charge is in connection with Ketamine.

[93] SD2 described his relationship with the accused as nephew and uncle and said that he lived in Puchong since April 2019 with the accused until the date he was arrested.

[94] SD2 said that he was involved in the sales of 'Herbal Life 'products since April of 2019 and also worked part time as a Grab deliverer and said that his monthly income was approximately between RM2,000 to RM3,000.

[95] SD2 said that the accused assisted him in delivering the 'Herbal Life' products. SD2 said that on 24 October 2019, a friend of his asked him to help

deliver something to his customer. SD2 in turn asked the accused to help deliver the item.

[96] SD2 said that that day he and the accused left the house at around 8pm and headed first for Kuchai Lama. While there, SD2 said that a friend of his called him over the phone but SD2 did not tell the accused about this.

[97] When he arrived at Kuchai Lama, his friend said that the bag he gave SD2 contained food. The food was placed in a white and black coloured bag which had a zip. SD2 said that he was paid a sum of RM30 in order to deliver the said bag.

[98] SD2 said that he never opened the zip of the bag in order to check its contents. SD2 said that he placed the bag on the seat behind the driver's seat. SD2 said that his friend told him to bring the bag to the back part of Times Square in Kuala Lumpur and that when he arrived there he was to call the person who was to be the recipient of the bag.

[99] SD2 said that when they arrived at the back part of Times Square, he asked the accused to get down from the car and cross the road when all of a sudden, he saw that the accused was surrounded by many people.

[100] SD2 testified that he did not tell the accused what was in the bag. He said that when he stopped at Times Square he noticed a Tenaga Nasional Bhd shop and a restaurant there.

[101] SD2 said that the area was moderately lit up and that the traffic flow was heavy. SD2 said that he waited in the car because it was a no parking zone. At first, SD2 did not know who were the men surrounding the accused.

[102] SD2 said he was shocked and that was why he did not get down from the car and so he drove away from the area in a state of panic. After about ten minutes, he turned back but discovered that there was no one at the scene.

[103] SD2 testified that he called his brother when he discovered that the accused was nowhere to be found. He said that he did not lodge a police report because he was at a loss at what to do.

[104] It was only after the family appointed a lawyer that he knew what had happened to the accused. SD2 said that he was not sure whether there were any missed calls on his phone because he tried to call the accused many times.

[105] SD2 said that exh P8 was not the bag that he gave to the accused. The

bag he gave the accused was black and white with a back handle. He said that the bag was in good condition when he received it and that there was no tear in the bag.

[106] SD2 said that he had never before seen exh P8. SD2 said that he asked the accused to send the bag because he could not find parking. SD2 denied he knew the contents of the bag and said that it did not belong to him.

[107] While under cross examination, SD2 said that he had been in the business of selling 'Herbalife' products for the past six months before his arrest. He got his stock from his agent whom he only knew as Madam Lim. He did not know her full name and had not been in contact with her for a long while.

[108] SD2 said that he kept stocks of the product in his house but only limited to two boxes. The value of two boxes were valued at RM8,000. He said that there were pills for slimming but he cannot remember what type they were.

[109] SD2 said that the Kia Sportage car belonged to his brother by the name of Ha How Ping and that he had only borrowed it. SD2 said that the friend who had asked him to help send the bag was not very close to him and he knew him only as William.

[110] He said that after the accused was detained, he had tried calling William but received no reply. He said that he had never saved William's contact number because he thought that he was one of his customers.

[111] He said he knew William when he worked as a Grab deliverer. William never told me where he was that day but he told William that he was having a meal at the DIY shop at Kuchai Lama. He does not remember the name of the shop where he ate but said that it was close to the DIY.

[112] SD2 said that William told him that he had to look after his children and that he had no time to deliver the bag himself. William told him to send it to a friend of his.

[113] SD2 said that William paid him RM30 when he took the bag from him outside the DIY shop. William told SD2 that when he arrived at Times Square, to make a call to the person who was to receive the bag.

[114] SD2 testified that William told him that the contents of the bag was foodstuff and so he did not inquire further and that there was no smell emanating from the bag.

[115] He further said that he did not feel uncomfortable or strange sending the bag. SD2 was, however, unable to remember the telephone number of the person he was supposed to have called. SD2 attempted to state the number as '016880 ...' but could not state in full. SD2 later said that the telephone number was actually William's number.

[116] SD2 said that when he arrived at Times Square, the person he called told him that he was wearing a white shirt. SD2 said that he called this person before he arrived at Times Square.

[117] SD2 asked the accused to get down from the car and hand over the bag to the person but said that he did not see who the person was.

[118] The defence called Detective Sub-Inspector Rizal Effendy as SD3. SD3 testified that he attended a briefing on 24 October 2019 at around 8pm, given by Inspector Hafizi at IPK Kuala Lumpur.

[119] After the briefing, SD3 said that the police party left IPK at around 8:30pm and arrived at the place of the incident at around 8:45pm.

[120] SD3 said that the lighting at the scene of the incident was brightly lit and that the road had motor vehicles but was not very busy. SD3 said that he and the other members of the party conducted an observation inside the car.

[121] SD3 said that Inspector Hafizi (SP2) was in a car in front of his car and that the arrest took place at 9:20pm. SD3 testified that he saw the accused walk pass his car.

[122] SD3 agreed with learned counsel's suggestion that from where he was positioned, he would not be able to see if the accused had alighted from a car.

[123] To a suggestion by learned counsel that the accused came in a Kia Sportage registration number W 4516 Q driven by Ha How Kok, SD3 said that he did not know.

[124] To the suggestion that after Ha How Kok observed the accused being arrested, he fled the scene, SD3 said that he did not see this.

[125] SD3 testified that during the examination of the said bag, police found six packets containing dangerous drugs. SD3 said that while SP2 had opened and examined the packets, he did not make any cuts in it.

[126] SD3 said that he cannot remember whether the exhibits including the

bag was torn or cut. SD3 did not agree to the suggestion that the police did not make any observation but had immediately carried out the arrest.

[127] During re-examination, SD3 agreed that the said bag was in good condition when it was seized.

DUTY OF THE COURT AT THE CONCLUSION OF THE TRIAL

[128] The duty of a trial court at the conclusion of the defence's case is set out in s 182A of the CPC which reads as follows:

> 182A Procedure at the conclusion of the trial
>
> (a) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
>
> (b) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
>
> (c) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[129] In *Md Zainudin bin Raujan v Public Prosecutor* [2013] 3 MLJ 773, the Federal Court observed as follows:

> At the conclusion of the trial, s 182A of the Criminal Procedure Code imposes a duty on the trial court to consider all the evidence adduced before it and to decide whether the prosecution has proved its case beyond reasonable doubt. The defence of the accused must be considered in the totality of the evidence adduced by the prosecution, as well as in the light of the well-established principles enunciated in *Mat v Public Prosecutor* [1963] 1 MLJ 263 with regard to the approach to be taken in evaluating the evidence of the defence.

[130] Section 182A states that 'all' the evidence must be considered by the court. It is to be noted that emphasis has been laid on the phrase 'all'.

[131] In *Prasit Punyang v Public Prosecutor* [2014] 4 MLJ 282 it was held as follows:

> In accordance with the provisions of s 182A(1) of the Criminal Procedure Code, it is the bounden duty of the learned JC, at the conclusion of the trial, to consider all the evidence adduced before him and shall decide whether the prosecution has proved its case beyond reasonable doubt. The legislature has advisedly used the term all the evidence. The emphasis must be on the word all.

[132] As to what amounts to a 'reasonable doubt', the phrase itself is not

defined in s 182A of the CPC. However, there is a plethora of case law as to what amounts to a reasonable doubt. In *Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16, it was held by Sharma J that:

> It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.'

[133] In the case of *Liew Kaling & Ors v Public Prosecutor* [1960] 1 MLJ 306 Thompson CJ referred to the quantum of proof required to prove a case 'beyond reasonable doubt' when he quoted the judgment of Denning J (as he then was) in the case of *Miller v Minister of Pensions* [1947] 2 All ER 372 as follows:

> The degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence' of course it is possible, but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that will suffice.

[134] Denning J went on to observe further in *Miller*'s case:

> That evidence that is in the least probable must be evidence that is credible, plausible or logical such that a reasonable person, having regard to the ordinary course of nature or natural events, human conduct, and in the particular circumstances of the particular case, would accept it as to act upon it as having occurred, or as truthful or accurate; and not a doubt that could, with the application of some ingenuity, be conjured up, envisioned or visualised in a story.

[135] In the case of *Public Prosecutor v Datuk Haji Harun bin Haji Idris & Ors* [1977] 1 MLJ 180 Abdoolcader J (as he then was) explained the phrase reasonable doubt as follows:

> It is not necessary for the defence to prove anything and all that is necessary for the accused to do is to give an explanation that is reasonable and throws a reasonable doubt on the case made out for the prosecution. It cannot be a fanciful or whimsical or imaginary doubt, and in considering the question as to whether a reasonable doubt has been raised, the evidence adduced by and the case for the defence must be viewed in at least some amount of light, not necessarily bright sunlight, but certainly not against the dark shadows of the night.

[136] It can be summarised therefore that the phrase 'reasonable doubt' excludes fanciful or imaginary doubts or stories that are so obviously conjured

up so as not to be in accord with the ordinary course of nature or human conduct when viewed and appraised from the test of reasonableness. The foregoing of course, are only guidelines and the court must apply these according to all the circumstances of the case at hand.

[137] Aside from the above, the correct thought process and stages that should be followed by a trial court in the assessment and evaluation of the defence evidence is that as encapsulated in the time-honoured decision of *Mat v Public Prosecutor* [1963] 1 MLJ 263 where it was held by Suffian J (as he then was) as follows:

> The position may be conveniently stated as follows:
>
> (a) If you are satisfied beyond reasonable doubt as to the accused's guilt — Convict.
>
> (b) If you accept or believe the accused's explanation — Acquit.
>
> (c) If you do not accept or believe the accused's explanation — Do not convict but consider the next steps below.
>
> (d) If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt — Convict.
>
> (e) If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt — Acquit.

[138] The approach in *Mat v Public Prosecutor* was judicially endorsed by the Federal Court as being the correct one to adopt when evaluating the evidence of the defence case in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2005] 6 AMR 203 when it held:

> For the guidance of the courts below, we summarise as follows the steps that should be taken by a trial court at the close of the prosecution's case:
>
> (i) the close of the prosecution's case, subject the evidence led by the prosecution in its totality to a maximum evaluation.
>
> Carefully scrutinise the credibility of each of the prosecution's witnesses. Take into account all reasonable inferences that may be drawn from that evidence. If the evidence admits of two or more inferences, then draw the inference that is most favourable to the accused;
>
> (ii) ask yourself the question: If I now call upon the accused to make his defence and he elects to remain silent am I prepared to convict him on the evidence now before me? If the answer to that question is 'Yes', then a prima facie case has been made out and the defence should be called. If the answer is 'No' then, a prima facie case has not been made out and the accused should be acquitted;
>
> (iii) after the defence is called, the accused elects to remain silent, then convict;

(iv) after defence is called, the accused elects to give evidence, then go through the steps set out in *Mat v Public Prosecutor* [1963] 1 MLJ 263.

[139] Following from the above, if the court does not accept or believe the defence raised by the accused it must not convict but must proceed a stage further by considering whether the defence's evidence has raised in the mind of the court a reasonable doubt as to the guilt of the accused. If it does, then the accused is nevertheless entitled to an acquittal.

[140] However, in this case the rebuttable statutory presumption under s 37(d) has also arisen against the accused. The burden of rebutting a statutory presumption that has arisen against an accused is on the balance of probabilities.

[141] This was decided in the Privy Council case of *Public Prosecutor v Yuvaraj* [1968] 1 MLJ 238 where the Board speaking through Lord Diplock said as follows:

> Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constitute the offence with which he is charged are 'not proved'. But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist 'unless the contrary is proved'.
>
> In such a case the consequence of finding that that particular fact is 'disproved' will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction. Where this is the consequence of a fact's being 'disproved' there can be no grounds in public policy for requiring that exceptional degree of certainty as excludes all reasonable doubt that that fact does not exist. In their Lordships' opinion the general rule applies in such a case and it is sufficient if the court considers that upon the evidence before it is more likely than not that the fact does not exist. The test is the same as that applied in civil proceedings: the balance of probabilities. This was the test which was approved by the Court of Criminal Appeal in *R v Carr-Briant* [1943] KB 607 a case upon a provision in an English statute in similar terms to that contained in s 14 of the Malaysian Prevention of Corruption Act 1961.

ANALYSIS OF THE DEFENCE'S CASE

[142] In summary, the defence case is that the bag containing the impugned drugs belonged to a friend of SD2 by the name of William, who was a Grab Food rider, and that the accused was only asked to help deliver the bag to a third party at the request of SD2's friend.

[143] The accused said that he saw a friend of SD2 hand over to SD2 a bag at Kuchai Lama and that SD2 placed the said bag at the back of their car on the back-passenger seat.

[144] Thereafter, at around 9pm, the accused and SD2 approached the back of Berjaya Times Square where SD2 asked the accused to cross the road and hand over the said bag to someone. The accused was arrested while walking to hand over the said bag.

[145] The reward for carrying out this task was said to be RM30 which was paid to SD2. Both the accused and SD2 denied that they had any knowledge as to the contents of the said bag. The defence's version is that they were told that the contents were foodstuff.

[146] SD2 testified that his involvement in the sale of 'Herbalife' products generated income for him in the region of RM2,000 to RM3,000 per month.

[147] In cross examination, SD2 said that he paid rental of RM1,500 per month, utilities of around RM500 and telco expenses of around RM200.

[148] The prosecution in submission said that it was surprising then how in that case SD2 could still manage to give an allowance to the accused of around RM300 to RM400 per month.

[149] What the prosecution meant was no doubt that the numbers don't really add up. Even taking the higher figure of SD2's income being RM3,000 per month, the expenses stated including the allowance to the accused hardly leaves SD2 with anything worthwhile to live on.

[150] I find, thus, that based upon the circumstances, SD2 and the accused had invented the 'Herbalife' business in an attempt to disguise the true nature of their business which was trafficking in dangerous drugs.

[151] Another anomaly that the prosecution pointed out which merits careful consideration is that if it were true that what was in the said bag and supposed to be conveyed to the person behind Times Square was food, it would have been more cost effective to send it through Grab Food or Food Panda than the RM30 spent to deliver the item.

[152] SD2 testified that when he saw many persons surround the accused, he was in a state of shock and as a result he fled the scene. However, such reaction is not in keeping with someone who ought to have been concerned for the welfare of his nephew unless the reaction was in fact prompted by the fact

A that SD2 knew that the bag contained dangerous drugs.

[153] In any event, I find as a fact that the version of SD2 fleeing the scene was merely concocted in order to propagate the defence that SD2 was also present at the scene where he had dropped the accused and in order to explain why the raiding party never reported seeing any other vehicle or persons at the scene.

[154] SD2's defence also does not withstand curial scrutiny because there was no attempt after the incident to clear the name of his nephew. No attempt was made to lodge any police report regarding the incident in order to state the true account of what had happened leading to the accused's arrest.

[155] The defence also contended that the accused and SD2 accepted the explanation of SD2's friend that the contents contained food stuff. Given the admission by SD2 himself that he and William were not particularly close, I find that no reasonable person would have accepted without inquiry or question as to the contents of the said bag.

[156] The matters suggested by the defence particularly the fact that it was put to SP2 that there was a Kia Sportage car present and that it was driven by the accused's uncle one Ha How Kok was stoutly denied by SP2.

[157] It was also denied by SP2 when it was put to him that information and description of Ha How Kok was given to him. SP2 further denied that despite the information given regarding Ha How Kok, SP2 made no efforts to trace him.

[158] In a similar vein, the Investigating Officer (IO) SP4, denied that he was furnished with information indicating that the accused had come in a vehicle bearing registration number W 4514 Q.

[159] These suggestions were no doubt put with a view to avoid running foul of the rule in *Alcontara*'s case which requires details of, inter alia, other individuals involved in the case, to be furnished to the police in order to facilitate investigation into the role played by these personalities. See *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209.

[160] Should no or insufficient particulars of these individuals be provided, then the failure to investigate into the role played by these individuals cannot be laid at the door of the police or the IO.

[161] Both SD2 and SD4 had credibly denied that they were furnished with

the necessary *Alcontara* notice so as to place upon them the responsibility of initiating any investigations regarding either the veracity of whether the accused had in fact alighted from a Kia Sportage W 4514 Q or the existence and presence of the said William at the scene.

[162] As alluded to earlier, there was no evidence that the accused was known to the members of the raiding party with the consequence that there would not arise any reason for the police to want to frame or 'fix up' the accused person.

[163] Accordingly, the testimony of SD2 is not capable of belief nor does it rebut the statutory presumption of possession and knowledge under s 37(d) DDA nor raise a reasonable doubt as to trafficking.

[164] I, therefore, under all the circumstances find as a fact that the accused did not alight from a Kia Sportage W 4514 Q driven by one Ha How Kok nor was there present a person by the name of William at the scene.

[165] The finding of fact, therefore, is that the accused was alone at the scene when he was arrested carrying the said bag containing the impugned drugs.

[166] As alluded to earlier it defies reasonable belief that SD2 would be paid the amount of RM30 for the delivery when it would be more cost effective if not a lot cheaper to utilise the services of either Grab delivery or Food Panda to transport foodstuff.

[167] It is also the defence's case that the bag produced in court is not the same bag seized by the police. This issue, however, has already been addressed at the close of the prosecution's case and I find no reason to depart from or alter my findings made at that stage.

[168] I, therefore, find that the said bag and its contents containing the impugned drugs produced and identified in court were the very same ones seize from the accused upon his arrest and the very same exhibits sent to the hemist for analysis. There was thus, no break in the chain of exhibits.

DECISION

[169] After considering all the evidence adduced in this case, this court finds that the defence has failed to rebut the statutory presumption of possession and knowledge under s 37(d) of the DDA.

[170] The accused has also failed to raise a reasonable doubt as to trafficking

A as defined under s 2 of the DDA.

[171] The prosecution has, therefore, successfully proven its case against the accused beyond a reasonable doubt and the accused is accordingly convicted of the charge under s 39B of the DDA.

B

[172] In mitigation, it was submitted that the accused was 15 years old at the time of arrest and is now aged 18 years old. The accused stayed with his uncle before his arrest and was earning a living by making sales of the Herbalife product.

C

[173] It was submitted that the accused had shifted from Sarawak to Kuala Lumpur in search of a better life. The accused was also a first offender and a child as defined by law.

D

[174] With regard to sentencing, the court in accordance with the provisions of s 97(2)(a) of the Child Act 2001, orders that the accused be detained in a prison during the pleasure of His Majesty the Yang di-Pertuan Agong.

E *Accused convicted of the charge.*

Reported by Ahmad Ismail

F

G

H

I